

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

WHITEHORN, et al.,

Plaintiffs,

v.

WOLFGANG'S STEAKHOUSE, INC.,
et al.

Defendants.

SAND, J.

USDS SDNY
DOCUMENT
ELECTRONICALLY FILED
DOC #:
DATE FILED: 6-12-12

09 Civ. 1148 (LBS)

ORDER

After a conference with counsel and due consideration of all the letters submitted by the parties, the Court orders that:

1. The class exclusion request forms previously submitted by Defendants' employees are invalid;
2. No factual hearing will be held on what, if anything, has occurred with respect to allegations of Defendants' improper interference;
3. Class counsel must mail one copy of the attached letter (Exhibit A) along with one copy of the Exclusion Request Form (Exhibit B) to each and every putative class member;
4. Parties move as expeditiously as possible to a definitive trial on the merits.

SO ORDERED.

June 12, 2012
New York, N.Y.



U.S.D.J.

EXHIBIT A

June _____, 2012

Re: Whitehorn, et al. v. Wolfgang's Steakhouse, Inc., et al
09 Civ. 1148 (LBS)

Dear _____,

You are receiving this letter because you are, or were, a tipped employee of Wolfgang's Steakhouse. On April 12, 2012, a Notice was distributed that explained that servers, bartenders, barbacks, and other tipped employees were included in a pending class action lawsuit for alleged unpaid wages and tips. The Notice stated that no action was necessary to remain in the lawsuit. However, if an employee wished to be excluded from the class, he or she should fill out and return an Exclusion Request form by June 19, 2012.

Class counsel recently raised concerns that tipped employees were being pressured to sign and return the Exclusion Request Forms. For this reason, all Exclusion Request Forms previously signed and submitted have been cancelled. The Court has also ordered the parties to distribute this letter to all of Wolfgang's servers, bartenders, barbacks, and other tipped employees.

Every recipient of this letter has the right to freely decide whether he or she wishes to be a member of the class. Wolfgang's is legally prohibited from discharging, demoting, or in any way retaliating against any employee who decides to join the class. Wolfgang's managers may not pressure an employee to return an Exclusion Request form.

If you wish to remain in the class, no action is necessary.

If you wish to be excluded from the class, you must sign and mail the attached Exclusion Request Form by _____, 2012 [30 days from mailing]. You must do this even if you previously signed and submitted an Exclusion Request Form.

EXHIBIT B

EXCLUSION REQUEST FORM

I hereby request to be excluded from this class action lawsuit for unpaid wages known as Whitehorn, et al. v. Wolfgang's Steakhouse, Inc., et al., 09 Civ. 1148. I understand that by excluding myself, I will not get any money or other benefits that may come from a trial or settlement of this lawsuit. However, I will not be bound by any of the Court's orders or judgments in this class action lawsuit. I will also keep any rights that I might have to sue Wolfgang's Steakhouse, Inc. and related entities in a separate lawsuit for unpaid wages and benefits.

Full Legal Name (Print)

Signature

Date

If you want to be excluded from the class, mail this form,
postmarked by _____, 2012 to:

Michael D. Palmer
JOSEPH, HERZFELD, HESTER & KIRSCHENBAUM LLP
233 Broadway, 5th Floor
New York, NY 1029

DO NOT MAIL THIS FORM IF YOU WANT TO STAY IN THE CLASS